UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, U.S. Department of Housing and Urban Development, on behalf of Chicago Lawyers' Committee for Civil Rights Under Law, Inc. and Lolita Lindo,
Charging Party,

Chicago Lawyers' Committee for Civil Rights Under Law, Inc.
Intervenor,
v.

Janusz Godlewski,
Respondent.

CORRECTED COPY

HUDALJ 07-034-FH
FHEO Case: 05-06-0264-8, 05-06-1663-8
Decided: February 1, 2008

Latham & Watkins LLP
For Intervenor

Before: CONSTANCE T. O'BRYANT
Administrative Law Judge

INITIAL DECISION AND ORDER
ON APPLICATION FOR ATTORNEY FEES

On October 26, 2007, Complainant Intervenor Chicago Lawyers' Committee for Civil Rights Under Law, Inc. ("CLC" or "Intervenor"), through its counsel, filed a petition for award of reasonable attorneys' fees, costs and expenses. Respondent has not responded to the petition. After considering the petition, I find that Intervenor is entitled to $56,742.46 of the requested fees.

Background

On or around August 9, 2005, Complainant Lolita Lindo ("Ms. Lindo") viewed a sign posted by Respondent Janusz Godlewski ("Respondent Godlewski") that advertised an apartment for rent and specified "No kids, no dog." Ms. Lindo has a minor child and was shocked and angered by the sign. The CLC and Ms. Lindo filed complaints

("Complaints") with the U. S. Department of Housing and Urban Development ("HUD" or "the Government"), on or about November 23, 2005 and August 1, 2006, alleging familial status violation of the Fair Housing Act ("the Act"). On April 24, 2007, HUD charged Respondent Godlewski with engaging in a discriminatory housing practice in violation of Section 3604(c) of the Act. Respondent Godlewski did not answer the Charge. HUD filed a Motion for Default on June 1, 2007 and the Court issued a Default Decision and Order on July 6, 2007, granting HUD's Motion for Default Judgment and setting a hearing on damages for September 11, 2007, in Chicago, Illinois.

A hearing on damages was conducted in Chicago on September 11, 2007, at which HUD, CLC and Ms. Lindo appeared. Respondent did not appear nor was he represented.

At the hearing ("the Hearing"), both HUD and outside counsel for CLC examined witnesses and entered various documents into evidence. The CLC also reserved its right to submit its request for attorneys' fees and costs at that time.

On December 21, 2007, I issued an Initial Decision in the case awarding CLC a total of $24,394.16 in damages - $13,394.16 for diversion of resources and $10,000.00 for frustration of mission. This amount was the full amount requested. Although CLC's attorneys' fee petition had been submitted, I did not rule on the petition in that decision.

In accordance with 24 C.F.R. § 180.705, CLC has submitted a summary chart that shows the amount of time, the hourly rate, and the amount billed by month for each person at Latham & Watkins LLP ("L&W"), CLC's outside counsel. Ex. A. L&W seeks to recover $49,215.50 in attorneys' fees. CLC also attached a list of the out-of-pocket expenses incurred by L&W in the amount of $6,545.96, and an affidavit of W. Bryan Lytton of L&W setting forth the factual bases for the amounts claimed by L&W both as attorneys' fees and as expenses. Ex. G. Although L&W promised that a more detailed summary, complete with descriptions for time entries, would be filed in an amended filing, no amended or subsequent filing has been received.

Finally, CLC submitted affidavits, including time records, for CLC staff attorneys who were said to be involved in this case since August 2005, namely Clyde E. Murphy, Elizabeth Shuman-Moore, Elyssa Balingit Winslow and Laurie A. Wardell, outlining their involvement and factual basis for the amounts charged. Exs. C, D, E, and F, respectively. The CLC seeks to recover $53,362.00 as reasonable attorneys' fees for the work done on this case by those staff attorneys. The proposed hourly rate for each CLC staff attorney is contained in the affidavit of Clyde E. Murphy, the Executive Director of CLC. Ex. C.

Applicable Law

The Fair Housing Act, as amended 42 U.S.C. §§ 3601, *et seq.* ("the Act"), provides that a prevailing party in an administrative proceeding is entitled to recover

attorney fees. 42 U.S.C. § 3612(p); *see* 24 C.F.R. § 180.705(b). A prevailing party is one whose success on significant issues achieves sought after benefits. *See Busche v. Burkee,* 649 F.2d 509, 521 (7th Cir.), *cert. denied,* 454 U.S. 897 (1981); *see also Dixon v. City of Chicago,* 948 F.2d 355, 357-58 (7th Cir. 1991).[1] Section 180.705(b) of the HUD's regulations also provides that

> To the extent that an intervenor is a prevailing party, the respondent will be liable for reasonable attorney's fees unless special circumstances make the recovery of such fees and costs unjust.

Thus, CLC, having prevailed in the proceedings in this case is entitled to recover reasonable attorneys' fees from Respondent unless special circumstances make the recovery of such fees and costs unjust.

The burden of establishing the reasonableness of the requested rate, as well as the number of hours expended on litigation, is on the applicant. *Hensley v. Eckerhart*, 461 U. S. 424, 433, 103 S. Ct. 1933, 1939, (1988). A reasonable rate is the prevailing market rate in the relevant legal community. *Blum v. Stenson,* 465 U.S. 886, 895 (1984). An attorney's expertise is a consideration in determining the rate. *See id.* at 898; *Buffington v. Baltimore County, Md.,* 913 F.2d 113, 130 (4th Cir. 1990), *cert. denied,* 499 U.S. 906 (1991). Accordingly, the applicant must establish that the claimed rate is "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Blum,* 465 U.S. at 895 n.11.

An applicant must submit an accounting of the time expended on litigation, ordinarily including an affidavit providing dates and the nature of the work performed. *See Calhoun v. Acme Cleveland Corp.,* 801 F.2d 558 (1st Cir. 1986). The applicant's counsel need not "record in great detail how each minute of . . . time was expended. But at least counsel should identify the general subject matter of . . . time expenditures." *Hensley,* 461 U.S. at 437 n.12.

The application for fees must be sufficient to ascertain that the applicant's attorney worked on an issue upon which applicant prevailed, that the work did not constitute an unwarranted duplication of effort, and that the time involved was not excessive. *See id.* at 434, 437; *Tomazzoli v. Sheedy,* 804 F.2d 93, 97 n.5 (7th Cir. 1986).

There is no precise rule or formula for making fee determinations. The judge has discretion, guided of course by the case law interpreting similar attorneys' fee provisions, to determine reasonable attorneys' fees. However, in calculating the number of reasonable hours expended on a particular case, the court should look to "its own

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[1]These and numerous cases cited in this decision are cases interpreting the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988 ("CRA Fees Act"). Cases interpreting the CRA Fees Act also apply to the Fair Housing Act. *See* 42 U.S.C. § 3602(o); *see also* House Judiciary Comm., *Fair Housing Amendments Act of 1988,* H. Rep. No. 711, 100th Cong., 2d Sess. 13, *reprinted in* 1988 U.S.C.C.A.N. 2173, 2174 (amendments to the Act make its fee provision similar to those in other civil rights statutes).

familiarity with the case and its experience with the case generally as well as to the evidentiary submissions and arguments of the parties." *Clarke v. Frank*, 960 F. 2d 1146, 1153 (2d Cir. 1992) (*citing De Lippo v. Morizio*, 759 F.2d 231, 234 (2d Cir. 1985)(citations omitted.) Using the time records submitted as a "benchmark, the court should exclude all time that is excessive, duplicative, or inadequately documented." *Watkins v. Fordice*, 7 F.3d 453, 457 (5th Cir. 1993), *on remand*, 852 F. Supp. 542 (S.D. Miss. 1994), *aff'd*, 49 F.3d 728 (5th Cir. 1995).

Discussion

A. CLC's request for attorneys' fees and expenses for services provided by L&W

Exhibit A shows L&W's stated amounts sought to be recovered as reasonable attorneys' fees for eight (8) attorneys in the firm, including W. Bryan Lytton. The Exhibit shows only the attorney's name, the month/year of work performed, the number of hours claimed, the hourly rate, and the total amount requested. It does not contain, for any attorney, an identification of the general subject matter of time expenditures. *See Hensley*, 461 U. S. at 437 n. 12**.** Although L&W promised that a more detailed summary, complete with descriptions for time entries, would be filed in an amended filing, as a useful exhibit for the Court to review, no amended or subsequent filing has been received. Accordingly, I conclude that CLC has not met its burden of supporting the requested award of attorneys' fee for the work of the L&W attorneys, other than Mr. Lytton. As to Mr. Lytton, his Affidavit certifies that he "was primarily responsible for conducting and coordinating all of the research, drafting of motions and briefs, managing client relationships, determining strategy and tactics, preparing for briefs, coordinating with HUD, supervising associate attorneys, summer clerks, and paralegals, and generally performing all of the other tasks incident to litigation of the nature present in this case." And, of course, he represented CLC at the Hearing. Because of this certification and his conduct at the Hearing, I find ample basis to award the $23,515.50 requested by CLC for attorneys' fees for Mr. Lytton. Moreover, on the basis of the certification, I find adequate basis to award the $6,545.96 in costs and expenses requested for L&W. However, I do not find that Mr. Lytton's certification is sufficient to establish the reasonableness of the attorneys' fee requested by the seven other individual lawyers at L&W.

B. CLC's request for attorneys' fee for CLC's staff attorneys

CLC seeks to recover $53,362.00 in reasonable attorney fees for the work done on this case by its own staff attorneys. I accept the hourly rate proposed for each attorney, however the number of hours seems excessive for a case of this type. I have considered the complexity of the case. The legal issue involved in the matter was neither novel nor overly complex and many decisions were readily available and easily applied to the facts of this case. I conclude that some lesser amount is appropriate.

The number of hours claimed to have been expended by intervenor's staff seems excessive in light of the nature of the case. First of all, the case was prosecuted by HUD. There is no indication that HUD's counsel were inadequate in their

representation of the two complaining parties, including CLC. Moreover, CLC had outside representation. I question the participation of so many attorneys, without significant duplication. As noted, this was not a complex case. CLC's allegations of discriminatory conduct by Respondent were clear and straightforward. It involved Respondent's posting of an ad pertaining to a rental, and required little evidence to prove the FHA violation. Because CLC is itself a complainant, it should have had minimal need for research in the area of civil rights law. Following the filing of the complaint, Respondent failed to appear and HUD promptly moved for a default judgment. After the default judgment was granted, CLC had the available evidence to establish damages – no investigation was needed. No discovery in the traditional sense was required or undertaken. Although numerous pleadings were filed, they were filed by HUD and CLC, for the most part, simply joined in on the filings. At the Hearing, the sole issue addressed, as to CLC, was the amount of damages CLC suffered as a result of Respondent's conduct. Mr. Lytton represented CLC at the Hearing and his request shows substantial time devoted to preparation for the Hearing. And, it was Mr. Lytton who examined CLC's witnesses. Mr. Lytton filed the post-hearing brief. Accordingly, I conclude that the amount recovered by CLC should be reduced by 50%, for a recovery of $26,681.00

After careful consideration of CLC's fee petition and supporting documents, and for the reasons stated above, I find that CLC is entitled to recovery of attorneys' fees and costs in the amount of $56,742.46.

CONCLUSION

CLC has prevailed in this case and is therefore entitled to an award of attorneys' fees and costs. Excepting as described above, CLC's application for award of attorneys' fees and costs appears reasonable and this award is appropriate.

ORDER

It is **HEREBY ORDERED** that:

1. CLC's application for an award of interim attorneys' fees and costs is granted, in part, and denied, in part;

2. Within 30 days of the date this initial decision becomes final, Respondent is ORDERED to pay CLC a total of $56,742.46, consisting of attorneys' fees of $23,515.50 for L&W, $6,545.96 for costs and expenses of L&W, and $26,681.00 for attorneys' fees of CLC's staff attorneys; and

3. This Order is entered pursuant to 42 U.S.C. § 3612(p) and 24 C.F.R. § 14.330, and will become final upon the expiration of thirty (30) days or the affirmance, in whole or in part, by the Secretary of the United States Department of Housing and Urban Development within that time. *See* 24 C.F.R. §§ 14.335, 14.340, 180.680(b).

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CONSTANCE T. O'BRYANT
Administrative Law Judge

Dated: February 1, 2008